JAMES G. STOCKTON

IBLA 95-265 Decided May 20, 1997

Appeal from action taken by the Montana State Office, Bureau of Land Management, to close a settlement claim file. (MT) BIL 035473.

Affirmed.

1. Homesteads (Ordinary): Generally

> In the absence of a showing that title to two lots of public land was acquired under the homestead laws by a predecessor-in-interest, a claim of entitlement to patent of both lots was properly denied by BLM.

APPEARANCES: James G. Stockton, Huntley, Montana, pro se; John C. Chaffin, Esq., Office of the Field Solicitor, Department of the Interior, Billings, Montana, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

James G. Stockton has appealed from a January 20, 1995, determination by the Montana State Office, Bureau of Land Management (BLM), as amended on March 3, 1995, to close the file on his settlement claim (MT) BIL 035473 to lots 12 and 13, sec. 33, T. 3 N., R. 28 E., Principal Meridian, Yellowstone County, Montana. Stockton claims he is the successor to a homestead entry made by his uncle, William L. Stockton (a.k.a. W. L. Stockton and Lloyd W. Stockton), sometime in the 1930's and is entitled to a patent to the land. It was decided that Stockton's claim should be rejected when BLM found no record that William L. Stockton had filed a homestead entry application or the necessary final proof required under the homestead laws prior to their repeal in 1976; BLM therefore rejected Stockton's claim because it was without foundation in law. On March 22, 1995, a stay was granted in this case, based on Stockton's allegation he could show that his uncle had made "a proper application for entry," and that he is the successor-in-interest to the entry so made. We now vacate the stay and affirm BLM's decision to close the file on this claim.

The January 1995 Decision found, first, that the land claimed by Stockton had been withdrawn from entry by a First Form Reclamation Withdrawal dated February 16, 1909, and, second, that the record contains no evidence that the elder Stockton filed for entry or final proof of his settlement claim, which makes his successor's interest in the land no more than that of an unperfected homestead. The March 1995 amendment to BLM's January action, however, finds that the referenced withdrawal was changed

from first form to second form by Secretarial Order dated April 15, 1909, thereby opening the lands for entry under the homestead laws. Nonetheless, BLM observes that:

> This additional withdrawal documentation, however, does not change the conclusion of the Bureau of Land Management's decision dated January 20, 1995, to close this settlement claim. Most significantly, this office still has no record of either the filing of entry application or the acceptance of final proof for the subject settlement claim, and the homestead and settlement authorities were repealed by the Federal Land Policy and Management Act of 1976.

Stockton filed an earlier application for title to the same land under the Color of Title Act, 43 U.S.C. § 1068 (1994), based upon a quitclaim deed executed by his uncle on December 6, 1982, and recorded on February 24, 1984, granting James Stockton "all right, title and interest owned, claimed or held" in lots 12 and 13. That application was rejected by this Board in James G. Stockton, 111 IBLA 344 (1989). Therein, we held:

> William L. Stockton's claim to the land derives from what appears from the record before the Board to be an unperfected homestead entry. As noted, there is no evidence that William L. Stockton ever filed an entry application or that he ever submitted final proof of settlement of lots 12 and 13 under the homestead laws. See 43 U.S.C. Chapter 7, repealed by P.L. 94-579, Title VII, § 702, Oct. 21, 1976, 90 Stat. 2787. Title to public land claimed under the homestead laws remains in the United States until a patent issues. Since William L. Stockton did not receive a patent to lots 12 and 13, title to such land remains in the United States.

Id. at 348-49.

With his statement of reasons (SOR), Stockton has submitted 12 exhibits, many of which appear in BLM's official record. Those exhibits show that his uncle filed notices of leave and return during the years 1933 through 1935, and that, on November 29, 1933, he applied with the Commissioner of the General Land Office in Billings, Montana, for a survey, which was made in May 1935. Based upon his interpretation of these documents, Stockton argues that his uncle filed a settlement claim on the land at issue, which was docketed in 1933 as BLM Serial No. 034649. After the survey, according to Stockton, his uncle filed a notice of entry on Lots 12 and 13, which encompass approximately 52 acres, but the notice was misfiled as a second settlement claim on the same land in file No. 035473. (SOR at 1-2.) He contends that the historical index supports his position and points to his exhibits 8 and 9 that show Lloyd W. Stockton holding Claim No. 034649 and William L. Stockton holding Claim No. 035473 while his exhibits 10 and 11 show "Mr. Stockton as homesteading Lots 12-13." (SOR at 2.) He alleges that BLM made mistakes in handling

the homestead entry and led William Stockton to believe that the land was withdrawn from homestead entry when it was not. Id. Finally, he argues that, "[t]he fact that the homestead laws were later repealed did not and does not release the United States from its original obligation to issue a patent to the rightful owner of the land or vest that owner's successor and heir with valid title to the land." Id.

[1] Stockton has not made a showing that will permit us to reverse our ruling in James G. Stockton, supra, that the elder Stockton had no more interest in lots 12 and 13 than an unperfected homestead. Entry of unappropriated public lands was provided for by 43 U.S.C. § 161 (1994), repealed by the Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, Title VII, § 702, Oct. 21, 1976, 90 Stat. 2787. See Everett J. Johnson, 95 IBLA 136, 137 (1987). William Stockton may have intended to homestead and then obtain a patent on the property here at issue, but, his nephew's arguments notwithstanding, the record contains no evidence that he either filed a notice of entry or made final proof resulting in entitlement to a patent. Because the homestead laws have been repealed, nothing less than entitlement to a patent issued to William Stockton would suffice to grant James G. Stockton, as his uncle's grantee, rights in the property. See James G. Stockton, supra.

There is a legal presumption of regularity, which is rebuttable, that supports the official acts of public officers in the proper discharge of their duties. Milan M. Martinek, 139 IBLA 38, 41 (1996). We find Stockton's unsupported argument that BLM's interpretation of documents submitted by his uncle is erroroneous to be insufficient to rebut the presumption of regularity that attends the official record upon which BLM relies. This appeal must be denied as without foundation in the record before us. Other arguments advanced by Stockton not specifically addressed herein have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the stay ordered on March 22, 1995, is vacated, and the Decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge